

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH L. ANDERSEN,

Plaintiff,

v.

MICHAEL J. ASTRUE,

Defendant.

CASE NO. C12-460 MJP

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

THE COURT, after careful consideration of the plaintiff's complaint, the parties' briefs, all papers and exhibits filed in support and opposition thereto, the Report and Recommendation of the Honorable James P. Donohue, the objections of Plaintiff, and the balance of the record, AFFIRMS the Report and Recommendation and DISMISSES this case.

Plaintiff's objections (Dkt. No. 21) do not raise any valid legal issues or new information not addressed in the Report and Recommendation. On the issue of discounting Mr. Andersen's credibility, Plaintiff's legal argument conflates inconsistency with medical evidence with lack of support in medical evidence. (*Id.* at 1-2.) "Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony." Carmickle v. Comm'r, SSA, 533 F.3d 1155, 1161 (9th Cir. 2008). The Report and Recommendation properly relies on such a

1 contradiction, not mere lack of support. (Dkt. No. 20 at 9-10.) Further, Plaintiff's arguments
2 regarding the rejection of Drs. Fleming and Kim's opinions do not call into question Magistrate
3 Judge Donahue's conclusion that the ALJ offered specific and legitimate reasons for the
4 decision.

5 Likewise, Plaintiff's arguments related to the fibromyalgia diagnosis do not establish the
6 ALJ's consideration of the condition, or lack thereof, was erroneous. Plaintiff's argument that
7 some symptoms of fibromyalgia may have existed before diagnosis does not establish a lack of
8 failure to meet the durational requirement before the ALJ, and is already addressed in the Report
9 and Recommendation. (Dkt. No. 20 at 14.)

10 Having considered Plaintiff's objections, the Court does hereby find and ORDER:

11 (1) The Court adopts the Report and Recommendation.

12 (2) The final decision of the Commissioner is AFFIRMED and this case is dismissed
13 with prejudice.

14 (3) The Clerk of the Court is directed to send copies of this Order to the parties and to
15 Judge Donohue.

16 Dated this 12th day of January, 2013.

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19 Marsha J. Pechman
20 Chief United States District Judge
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